BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Thomas Daley, *et. al.*

Application No.	:	10/767,699	Confirmation No. :	5670

Filed   :   January 29, 2004

For   :   SYSTEM AND METHOD FOR CONTROLLING THE DISCLOSURE
                       OF A TRADING ORDER

Group Art Unit   :   3691

Examiner   :   Bijendra K. Shrestha

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Sir:

This is an appeal from the decision of Examiner Bijendra K. Shrestha, Group Art Unit

3691, in the Final Office Action of July 22, 2008 ("Final Office Action"), rejecting claims **10-18**

and **25-42** in the present application. A Reply to Office Action was filed on September 22, 2008,

and an Advisory Action was mailed on October 20, 2008. A Notice of Appeal was filed on

December 22, 2008.

Applicants herewith request a **three-month** extension of time, which extends the time to

file this paper to May 22, 2009.

The Commissioner is hereby authorized to charge the filing fee and the **three-month**

extension of time fee, as well as any additional fees which may be required, or credit any

overpayment, to Deposit Account No. 50-3938.

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I.   REAL PARTY IN INTEREST

The real party in interest of the present application is BGC Partners, a corporation organized and existing under the laws of the State of Delaware, U.S.A., and having a place of business at 499 Park Avenue, New York, NY 10022.

II.   <u>RELATED APPEALS AND INTERFERENCES</u>

There are no known related appeals or interferences.

III.   STATUS OF CLAIMS

The following claims are pending and stand rejected in the present application:

- Independent claims **10, 25** and **34**
- Dependent claims **11-18, 26-33,** and **35-42**

The following claims are being appealed:

- Independent claims **10, 25** and **34**
- Dependent claims **11-18, 26-33,** and **35-42**

IV.   <u>STATUS OF AMENDMENTS</u>

No amendments have been filed after the Final Office Action of July 22, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The presently claimed invention(s) generally relate to computer implemented methods, apparatus and article of manufacture for controlling the disclosure of a trading order.

Independent Claim 10

Independent claim 10 is directed to a method that comprises receiving a first order for a quantity of a trading product. *See, e.g.*, Specification, pg. 8, lines 16-20. The first order indicates a size of the first order that may be disclosed. *See, e.g.*, Specification, pg. 8, lines 22-25; pg. 33, line 30-pg. 34, line 2. The method also comprises identifying a plurality of market centers, in which each market center comprises a second order that corresponds to the first order. *See, e.g.*, Specification, pg. 34, lines 5-9. Furthermore, the method comprises determining a disclosure policy adopted by each identified market center. *See, e.g.*, Specification, pg. 31, lines 8-13. The method also comprises selecting, based on the disclosure policy, a market center from the plurality of identified market centers. *See, e.g.*, Specification, pg. 34, lines 5-9. In addition, the method comprises routing the first order to the selected market center. *See, e.g.*, Specification, pg. 34, lines 2-5. The first order is routed according to the disclosure policy of the selected market center. *Id.*

Independent Claim 25

Independent claim 25 is directed to an apparatus that comprises a processor and a memory. *See, e.g.*, Specification, pg. 3, lines 6-8. The memory stores instructions which, when executed by the processor, direct the processor to perform various method steps. *Id.*

The method steps comprise: receiving a first order for a quantity of a trading product. *See, e.g.*, Specification, pg. 8, lines 16-20. The first order indicates a size of the first order that

may be disclosed. *See, e.g.*, Specification, pg. 8, lines 22-25; pg. 33, line 30 to pg. 34, line 2.

The method also comprises identifying a plurality of market centers, in which each market center

comprises a second order that corresponds to the first order. *See, e.g.*, Specification, pg. 34, lines

5-9. Furthermore, the method comprises determining a disclosure policy adopted by each

identified market center. *See, e.g.*, Specification, pg. 31, lines 8-13. The method also comprises

selecting, based on the disclosure policy, a market center from the plurality of identified market

centers. *See, e.g.*, Specification, pg. 34, lines 5-9. In addition, the method comprises routing the

first order to the selected market center. *See, e.g.*, Specification, pg. 34, lines 2-5. The first

order is routed according to the disclosure policy of the selected market center. *Id.*

Independent Claim 34

Independent claim 34 is directed to an apparatus that comprises a storage medium. *See,*

e.g., Specification, pg. 3, lines 6-8; pg. 10, line 26 to pg. 4, line15. The storage medium stores

instructions which, when executed by a processor, direct the processor to perform various

method steps. *Id.*

The method steps comprise: receiving a first order for a quantity of a trading product.

See, e.g., Specification, pg. 8, lines 16-20. The first order indicates a size of the first order that

may be disclosed. *See, e.g.*, Specification, pg. 8, lines 22-25; pg. 33, line 30-pg. 34, line 2. The

method also comprises identifying a plurality of market centers, in which each market center

comprises a second order that corresponds to the first order. *See, e.g.*, Specification, pg. 34, lines

5-9. Furthermore, the method comprises determining a disclosure policy adopted by each

identified market center. *See, e.g.*, Specification, pg. 31, lines 8-13. The method also comprises

selecting, based on the disclosure policy, a market center from the plurality of identified market

centers. *See, e.g.,* Specification, pg. 34, lines 5-9. In addition, the method comprises routing the

first order to the selected market center. *See, e.g.,* Specification, pg. 34, lines 2-5. The first

order is routed according to the disclosure policy of the selected market center. *Id.*

VI.   <u>GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL</u>

The grounds for rejection to be reviewed on appeal are whether:

- Independent claims **25** and **34** and dependent claims **26-33** and **35-42** are indefinite under 35 U.S.C. §112, second paragraph.

- Independent claims **10, 25,** and **34** and dependent claims **11-18, 26-33,** and **35-42** are anticipated under 35 U.S.C. § 102 over U.S. Publication No. 20040236662 ("<u>Korhammer</u>").

VII.   ARGUMENT

A.   Summary of Argument

The Examiner rejected independent claims **25** and **34** (and claims **26-33** and **35-42**, which depend, respectively, from claims **25** and **34**) under 35 U.S.C. § 112, paragraph 2, as being indefinite for "failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention." <u>Final Office Action, p. 3</u>. Specifically, the Examiner argues that claims **25-42** represent "improper dependent claims" because they recite "both computer readable medium and system to carry out a method of claim as stated." <u>Id</u>.

However, the rejections of claims **25** and **34** are improper because the Examiner mischaracterizes claims **25** and **34** as dependent claims. Independent claims **25** and **34** are written as claims that refer to a preceding claim (independent claim **10**), and this is an acceptable claim construction that is proper.

The language of the claims makes it clear that the claims recite either an apparatus or an article of manufacture claim. Each of claims **25** and **34** can be infringed (e.g., by selling the apparatus or the article of manufacture to another party) without infringing the method claim to which it refers. Thus, claims **25** and **34** are proper independent apparatus and article of manufacture claims. Applicants have paid the appropriate independent claim fees for examination of these independent claims. The claims have been written in simplified form by referring to claim **10** – and not explicitly repeat all the recitations of claim **10** – for the convenience of the Examiner and the public. In short, there is no *per se* rule that all claims which include a reference to another claim must be dependent claims. In fact, 35 U.S.C. §112,

paragraph 4 clearly prohibits that a mere reference to a previous claim would render a claim to be in dependent form.

Because the Examiner has incorrectly characterized independent claims **25** and **34** as being written in improper dependent form, the Examiner has failed to establish a *prima facie* case of indefiniteness. For the same reasons, the Examiner also has failed to establish a *prima facie* case of indefiniteness for claims **26-33** and **35-42**, which depend from, respectively, claims **25** and **34**.

The Examiner also rejected all of claims **10-18** and **25-42** under 35 U.S.C. § 102 as being anticipated by Korhammer. Final Office Action, p. 3-4. However, no *prima facie* case of anticipation has been proven for any of the claims, as the Examiner repeatedly fails to show that all of the limitations in a claim are taught by the prior art.

For example, with respect to independent claims **10, 25** and **34,** the Examiner appears to have misunderstood the language of the claims, which recite, *inter alia*, "*determining a disclosure policy adopted by each identified market center*" (emphasis added). In his rejection, the Examiner argues that Korhammer teaches this limitation because: "where [sic] customized order book on the trader terminal organized by security and price [sic] disclosing each market center and its information." Final Office Action, p. 4.

This argument advanced by the Examiner bears no relationship, whatsoever, to "*determining a disclosure policy adopted by each identified market center*" (emphasis added). At best, Korhammer teaches a "show field" that when used, indicates the "amount of shares" that a user wishes to be "shown" to other users." Korhammer, para. 52. Referring to a "show field" on a display screen, however, is irrelevant and therefore cannot satisfy the *prima facie*

requirement of anticipation under 35 U.S.C. § 102. Thus, the Examiner clearly has failed to

establish a *prima facie* case of anticipation for independent claims **10, 25** and **34** (and claims **11-

18, 26-33** and **35-42**, which depend therefrom).

B.   Rejection Under 35 U.S.C. § 112, paragraph 2

Independent claims **25** and **34** (and claims **26-33** and **35-42**, which depend, respectively,

from claims **25** and **34**) were rejected under 35 U.S.C. § 112, paragraph 2, as being indefinite for

"failing to particularly point out and distinctly claim the subject matter which the Applicants

regard as the invention." Final Office Action, p. 3. Specifically, the Examiner argues that

claims **25-42** represent "improper dependent claims" because they recite "both computer

readable medium and system to carry out a method of claim as stated." *Id.* The Examiner

asserts that "Applicants fails to point out distinctly whether it is [sic] system or method claim and

which steps of [sic] claim or whichever dependent claim it is dependent on is carrying out the

method as described." *Id.*

1.   *Legal Standard*

If examination at the initial stage does not produce a *prima facie* case of unpatentability,

then without more, the Applicants are entitled to a grant of the patent. In re Oetiker, 977 F.2d

1443, 1445 (Fed. Cir. 1992).

A claim in dependent form shall contain a reference to a claim previously set forth, and

then specify a further limitation of the subject matter claimed. 35 U.S.C. § 112, ¶ 4. (Similarly,

as stated in under 37 C.F.R. § 1.75(c), "[o]ne or more claims may be presented in dependent

form, referring back to and further limiting another claim or claims in the same application.")

However, a claim may refer to another claim without further limiting or being dependent on that

claim. For example, an independent product-by-process claim, directed to a product, may refer

to a method claim that describes a method of making the product. *See, e.g.,* Scripps Clinic &

Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1583 (Fed. Cir. 1991). In Scripps, the

Federal Circuit upheld the following claim:

> 13. Highly purified and concentrated human or porcine VIII:C
> prepared in accordance with the method of claim 1.

927 F.2d at 1570. The Scripps court held that this product-by-process claim should be construed

as a product claim, independent of how the product was made. *Id.* at 1583. The product-by-

process claim was not construed to further limit the method claim to which it referred, and

therefore was not dependent therefrom.

Referring to a preceding claim in order to define a limitation is an acceptable claim form

that should not necessarily be rejected as improper or confusing. *Ex parte* Porter, 25 USPQ2d

1144 (Bd. Pat. App. & Inter. 1992). As stated in MPEP 2173.05(p)(I), "[a] claim to a device,

apparatus, manufacture, or composition of matter may contain a reference to the process in

which it is intended to be used without being objectionable, so long as it is clear that the claim is

directed to the product and not the process." *See* In re Luck, 476 F.2d 650, 177 USPQ 523

(CCPA 1973); Scripps, 927 F.2d at 1583; and Microprocessor Enhancement, 520 F.3d at 1375

(upholding a claim directed to a pipelined processor capable of performing various recited

functions).[1]

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[1] The claim upheld by the Microprocessor Enhancement court is claim 7 of U.S. Patent No.
5,471,593, which states: "7. A pipelined processor for executing instructions comprising: a

2. **First Group: Claims 25 and 26-33 – No Prima Facie Showing of Indefiniteness Because Referring to Another Claim Does Not, By Itself, Render a Claim Dependent**

The sole basis for this rejection is that the independent apparatus claim refers to a preceding method claim. The rejection of claim **25** is improper because the Examiner mischaracterizes claim **25** as a dependent claim. Independent claim **25** is written as a claim that refers to a preceding claim (independent claim **10**), and this is an acceptable claim construction that is proper.

Claim **25** is an apparatus claim which refers to a method claim. Claim **25** begins by reciting "an apparatus" and contains a clear reference to only the claimed "apparatus," so there is no confusion that it might be a method claim or anything other than an apparatus claim. Furthermore, claim **25** recites two structural elements of the apparatus: a processor and a memory. The memory stores instructions that can direct the processor to perform the method of claim **10**.

A product claim may refer to a method claim and still be an independent claim. Referring to another claim does not, by itself, render a claim dependent. For example, an independent product-by-process claim is a claim for a product, but contains a reference to a method. *See, e.g.,* Scripps, 927 F.2d at 1570. This type of claim is proper. A product-by-process claim is not dependent on the method claim since it does not "further limit" the method claim. *Id.* at 1583. Moreover, a product-by-process claim may be infringed (e.g., by selling the product produced by another party when it is not currently executing the method) without

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conditional execution decision logic pipeline state, ... ; . . . ; the conditional execution decision logic pipeline stage performing a boolean algebraic evaluation of the condition code and said conditional execution specifier and producing an enable-write with at least two states . . . ." 520 F.3d at 1371.

infringing the method claim to which it refers. Thus, a typical product-by-process claim cannot be dependent on the method claim, since infringement of a dependent claim necessarily implies infringement of the base claim. *See, e.g.,* <u>*Id.*</u>

The language of apparatus claim **25** makes it clear that the claim recites an apparatus. The claim can be infringed (e.g., by selling the apparatus to another party) without infringing the method claim to which it refers. Thus, claim **25** is a proper independent apparatus claim. Applicants have paid the appropriate independent claim fee for examination of this independent claim. The claim has been written in simplified form by referring to claim **10** – and not explicitly repeat all the recitations of claim **10** – for the convenience of the Examiner and the public. If the recitations of claim **10** were copied into claim **25**, during prosecution the Examiner would need to carefully review amendments to the method language in both claims to verify consistency or identify differences. Interested members of the public would incur higher costs to determine the scope and meaning of each claim. The differences also could potentially lead to increased time and cost in a patent litigation to address differences in claim scope, prosecution history estoppel, the applicability of the doctrine of equivalents, support in the specification, etc.

In short, there is no *per se* rule that all claims which include a reference to another claim must be dependent claims. In fact, 35 U.S.C. §112, paragraph 4 clearly prohibits that a mere reference to a previous claim would render a claim to be in dependent form.

Because the Examiner has incorrectly characterized independent claim **25** as being written in improper dependent form, the Examiner has failed to establish a *prima facie* case of indefiniteness. For the same reasons, the Examiner also has failed to establish a *prima facie* case of indefiniteness for claims **26-33**, which depend from claim **25**.

3.   *Second Group: Claims 34 and 35-42 – No Prima Facie Showing of Indefiniteness Because Referring to Another Claim Does Not, By Itself, Render a Claim Dependent*

SEPARATE ARGUMENT OF PATENTABILITY

The sole basis for this rejection is that the independent article of manufacture claim refers to a preceding method claim. The rejection of claim **34** is improper because the Examiner mischaracterizes claim **34** as a dependent claim. Independent claim **34** is written as a claim that refers to a preceding claim (independent claim **10**), and this is an acceptable claim construction that is proper.

Claim **34** is an article of manufacture claim which refers to a method claim. Claim **34** begins by reciting "an article of manufacture" and contains a clear reference to only the claimed "article of manufacture," so there is no confusion that it might be a method claim or anything other than an article of manufacture claim. Furthermore, claim **34** recites two structural elements of the article of manufacture: a storage medium and a processor. The storage medium stores instructions that can direct the processor to perform the method of claim **10**.

As discussed above under subsection **B.2**, a product claim may refer to a method claim and still be an independent claim. Referring to another claim does not, by itself, render a claim dependent.

The language of article of manufacture claim **34** makes it clear that the claim recites an article of manufacture. The claim can be infringed (e.g., by selling the article of manufacture to another party) without infringing the method claim to which it refers. Thus, claim **34** is a proper independent article of manufacture claim. Applicants have paid the appropriate independent claim fee for examination of this independent claim. As discussed above under subsection

B.2,The claim has been written in simplified form by referring to claim **10** for the convenience of the Examiner and the public.

In short, there is no *per se* rule that all claims which include a reference to another claim must be dependent claims. In fact, 35 U.S.C. §112, paragraph 4 clearly prohibits that a mere reference to a previous claim would render a claim to be in dependent form.

Because the Examiner has incorrectly characterized independent claim **34** as being written in improper dependent form, the Examiner has failed to establish a *prima facie* case of indefiniteness. For the same reasons, the Examiner also has failed to establish a *prima facie* case of indefiniteness for claims **35-42**, which depend from claim **34**.

C.   Rejection under 35 U.S.C. § 102

Claims **10-18** and **25-42** were rejected under 35 U.S.C. § 102 as anticipated by Korhammer. Final Office Action, p. 3-4.

1. Legal Standard

If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more, the Applicants are entitled to a grant of the patent. In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

As stated by the Federal Circuit (and affirmed in MPEP § 2131), a prior art reference anticipates a patent claim only if it expressly or inherently describes "each and every limitation" set forth in the patent claim. *See* Trintec Indus., Inc. v. Top-U.S.A. Corp., 295 F.3d 1292, 1295

(Fed. Cir. 2002); MPEP § 2131. Inherent anticipation requires that the missing descriptive

material is "necessarily present," not merely probably or possibly present, in the prior art.

Trintec at 1295.

2.   ***Third Group: Independent Claims 10, 25 and 34 – No Prima Facie Showing of
         Anticipation Because*** <u>***Korhammer***</u> ***Does Not Teach All of the Limitations.***

SEPARATE ARGUMENT OF PATENTABILITY

The Examiner fails to show that <u>all</u> of the limitations of independent claims **10, 24** and **35**

are taught by the prior art.

Independent claims **10, 25** and **34** are directed, respectively, to a method, an apparatus

and an article of manufacture that describe, *inter alia*, "*determining a disclosure policy adopted*

by each identified market center."

Korhammer fails to teach "*determining a disclosure policy adopted by each identified*

market center." Nor has the Examiner argued otherwise.

It appears that the Examiner has completely misunderstood claims **10, 25** and **34**, as

evidenced by the unrelated argument that he advances below:

> Korhammer et al. teach a method comprising… determining a
> disclosure policy adopted by each identified market center (see
> Fig. 1; paragraph [0047]; <u>*where [sic] customized order book on the*</u>
> <u>*trader terminal organized by security and price [sic] disclosing*</u>
> <u>*each market center and its information*</u>) (emphasis added).

Final Office Action, p. 4. The Examiner's rejection requires further explanation-- the cited

portion provides no suggestion, whatsoever, as to why a trader terminal that is organized by

"security and price" would disclose "*determining a disclosure policy adopted by each identified*

market center," as recited by claims **10, 25** and **34**. In fact, there is no discussion, whatsoever, in

the cited-portions of Korhammer of "*a disclosure policy*" that is adopted by a market center.

At best, Korhammer teaches a "show field" that when used, indicates the "amount of

shares the user wishes to be 'shown' as being traded to other users." Korhammer, para. 52.

Referring a "show field" on a display screen, however, is irrelevant and therefore cannot satisfy

the *prima facie* requirement of anticipation under 35 U.S.C. § 102.

Because the Examiner fails to show that all the limitations of independent claims **10, 25**

and **34** are taught by Korhammer, he fails to establish a *prima facie* case of anticipation with

respect to these claims. The rejection of independent claims **10, 25** and **34** (and claims **11-18,**

26-33, and **35-42**, which depend, respectively, therefrom) is thereby improper.

       3.   ***Fourth Group: Dependent Claims 13, 28 and 37 – No Prima Facie Showing of***
                  Anticipation Because Korhammer Does Not Teach All of the Limitations.

SEPARATE ARGUMENT OF PATENTABILITY

The Examiner fails to show that all of the limitations of independent claims **13, 28** and **37**

are taught by the prior art.

Dependent claims **13, 28** and **37** are directed, respectively, to a method, an apparatus and

an article of manufacture that describe, *inter alia*,

> ... receiving an indication that the selected market center
> filled only a portion of the first order;
>   comparing an amount of the remaining portion of the first
> order and the size of the first order that may be disclosed;
>   determining that [the] size of the first order is less than the
> amount of the remaining portion of the first order...

Korhammer fails to teach *"comparing an amount of the remaining portion of the first order and the size of the first order that may be disclosed"* and *"determining that [the] size of the first order is less than the amount of the remaining portion of the first order."* Nor has the Examiner argued otherwise.

In fact, the Examiner completely ignores these limitations altogether. In rejecting claims **13, 28** and **37**, the Examiner merely cites the following: "see paragraph [0034]; where first order for 1000 shares is disclosed out of 20,000 shares for NASDAQ market." Final Office Action, p. 6.

There is no discussion, whatsoever, of *"comparing"* the remaining portion of a first order with the disclosure size of the first order. Nor is there any discussion of *"determining"* that the disclosure size is less than the remaining portion of the first order.

At best, the cited-portions of Korhammer describe a situation where a user may place a bid for a quantity of shares, while maintaining an undisclosed "hidden reserve" of shares. *See, e.g.,* Korhammer, para. 34.

The Examiner fails to provide any evidence, whatsoever, supporting his sweeping and wholly inappropriate assertion that a disclosure of a hidden reserve would adequately teach *"comparing an amount of the remaining portion of the first order and the size of the first order*

that may be disclosed" and *"determining that size of the first order is less than the amount of the remaining portion of the first order,"* as recited in claims **13, 28** and **37**.

Because the Examiner fails to show that <u>all</u> the limitations of claims **13, 28** and **37** are taught by Korhammer, he fails to establish a *prima facie* case of anticipation with respect to these claims. The rejection of claims **13, 28** and **37** is thereby improper.

D.   <u>Conclusion</u>

In view of the foregoing, Appellants submit that all of the pending claims are in proper condition for allowance, and the Board is respectfully requested to overturn the Examiner's rejection of these claims.

Respectfully submitted,

/Ruth J. Ma/

<u>May 22, 2009</u>   _____

Date   Ruth J. Ma
                                                       Reg. No. 55,414
                                                       Attorney for Appellants

VIII. CLAIMS APPENDIX

1-9.   Cancelled.

10. (Previously Presented) A method comprising:

    receiving a first order for a quantity of a trading product, in which the first order indicates a size of the first order that may be disclosed;

    identifying a plurality of market centers, in which each market center comprises a second order that corresponds to the first order;

    determining a disclosure policy adopted by each identified market center;

    selecting, based on the disclosure policy, a market center from the plurality of identified market centers; and

    routing the first order to the selected market center, in which the first order is routed according to the disclosure policy of the selected market center.

11. (Previously Presented) The method of claim 10 further comprising:

    determining that the selected market center has adopted a proprietary reserve policy, in which the selected market center fills the quantity of the first order, while disclosing only the size of the first order; and

    transmitting an indication of the quantity of the trading product and the size of the first order that may be disclosed.

12. (Previously Presented) The method of claim 10 further comprising:

determining that the selected market center has adopted an IOC policy; and

transmitting an IOC order to the selected market center, in which the selected market

center attempts to fill the quantity of the first order and cancels any portion of the first order that

is unfilled.

13. (Previously Presented) The method of claim 12 further comprising:

receiving an indication that the selected market center filled only a portion of the first

order;

comparing an amount of the remaining portion of the first order and the size of the first

order that may be disclosed;

determining that size of the first order is less than the amount of the remaining portion of

the first order; and

transmitting a day order for the size of the first order, in which the day order remains

available on the selected market center until at least one of the following occurs: the day order is

filled, the day order is cancelled, and trading at the selected market center is closed.

14. (Previously Presented) The method of claim 13 further comprising:

receiving an indication that the day order has been filled

determining the amount of the remaining portion of the first order; and

transmitting a second IOC order comprising the amount of the remaining portion of the first

order.

15. (Previously Presented) The method of claim 10 further comprising:

receiving an indication that the selected market center filled only a portion of the first order;

comparing an amount of the remaining portion of the first order and the size of the first order that may be disclosed;

determining that size of the first order is greater than the amount of the remaining portion of the first order; and

transmitting a day order for the amount of the remaining portion of the first order, in which the day order remains available on the selected market center until at least one of the following occurs: the day order is filled, the day order is cancelled, and trading at the selected market center is closed at end of day.

16. (Previously Presented) The method of claim 15 further comprising:

receiving an indication that the day order has been filled;

determining the amount of the remaining portion of the first order; and

transmitting a second IOC order comprising the amount of the remaining portion of the first order.

17. (Previously Presented) The method of claim 10 further comprising:

determining that the selected market center has adopted a NOIOC policy; and

transmitting a day order for the size of the first order, in which the day order remains available on the selected market center until at least one of the following occurs: the day order is filled, the day order is cancelled, and trading at the selected market center is closed at end of day.

18. (Previously Presented) The method of claim 17 further comprising:

receiving an indication that the day order has been filled;

determining an amount of the remaining portion of the first order;

determining that the amount of the remaining portion of the first order is greater than the size of the first order; and

transmitting a second day order for the size of the first order.

19-24. Cancelled.

25. (Previously Presented) An apparatus comprising:

a processor; and

a memory, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 10.

26. (Previously Presented) The apparatus of claim 25, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 11.

27. (Previously Presented) The apparatus of claim 25, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 12.

28. (Previously Presented) The apparatus of claim 27, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 13.

29. (Previously Presented) The apparatus of claim 28, in which the memory stores instructions

which, when executed by the processor, direct the processor to perform the method of claim 14.

30. (Previously Presented) The apparatus of claim 27, in which the memory stores instructions

which, when executed by the processor, direct the processor to perform the method of claim 15.

31. (Previously Presented) The apparatus of claim 30, in which the memory stores instructions

which, when executed by the processor, direct the processor to perform the method of claim 16.

32. (Previously Presented) The apparatus of claim 25, in which the memory stores instructions

which, when executed by the processor, direct the processor to perform the method of claim 17.

33. (Previously Presented) The apparatus of claim 32, in which the memory stores instructions

which, when executed by the processor, direct the processor to perform the method of claim 18.

34. (Previously Presented) An article of manufacture comprising:

        a storage medium, in which storage medium stores instructions which, when executed by

a processor, direct the processor to perform the method of claim 10.

35. (Previously Presented) The article of manufacture of claim 34, in which storage medium

stores instructions which, when executed by a processor, direct the processor to perform the

method of claim 11.

36. (Previously Presented) The article of manufacture of claim 34, in which storage medium

stores instructions which, when executed by a processor, direct the processor to perform the

method of claim 12.

37. (Previously Presented) The article of manufacture of claim 36, in which storage medium

stores instructions which, when executed by a processor, direct the processor to perform the

method of claim 13.

38. (Previously Presented) The article of manufacture of claim 37, in which storage medium

stores instructions which, when executed by a processor, direct the processor to perform the

method of claim 14.

39. (Previously Presented) The article of manufacture of claim 36, in which storage medium

stores instructions which, when executed by a processor, direct the processor to perform the

method of claim 15.

40. (Previously Presented) The article of manufacture of claim 39, in which storage medium

stores instructions which, when executed by a processor, direct the processor to perform the

method of claim 16.

41. (Previously Presented) The article of manufacture of claim 34, in which storage medium

stores instructions which, when executed by a processor, direct the processor to perform the

method of claim 17.

42. (Previously Presented) The article of manufacture of claim 41, in which storage medium

stores instructions which, when executed by a processor, direct the processor to perform the

method of claim 18.

IX.   EVIDENCE APPENDIX

None

X.   RELATED PROCEEDINGS APPENDIX

None